

**\* THE HON'BLE MR JUSTICE RAMESH RANGANATHAN**

**+ WRIT PETITION NO : 6948 of 1994**

-

% 28-03-2006

# Tulase Mahankali Petitioner

Vs.

\$ The Andhra University represented by its  
Registrar and tow others Respondents6

**! Counsel for the petitioners : Mr.P.Srinivaslu**

**^ Counsel for respondent No.1 & 2: Sri P.B.Vijaya Kumar, Standing Counsel  
Counsel for respondent No.3: Smt. K.Sesharajyam**

< Gist:

>Head Note

**?**

1) 1996 SCC (L&S) 1431

2) AIR 2005 SC 2026

3) 2006(1) ALT 785 (FB)

4) AIR 1990 SC 434

5) AIR 1991 SC 1260

**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

**W.P.NO.6948 OF 1994**

**ORDER:**

Appointment of the 3<sup>rd</sup> respondent as a lecturer, in the department of Human Genetics of the Andhra University, is questioned in this writ petition, as arbitrary and illegal and a consequential direction is sought to respondents 1 and 2 herein to appoint the petitioner in the said post.

2. Facts, to the extent necessary, are that, vide advertisement No. 18.1/92 dated 17.10.1992, applications were invited for several posts including that of a lecturer in human genetics and physical anthropology. The qualifications prescribed therein, for appointment to the post of lecturer, is as under:

“a. Good academic record with at least 55% marks or an equivalent grade at Master’s Degree level in the relevant subject from an Indian University or an equivalent degree from a Foreign University.

b. Candidates, besides fulfilling the above qualifications should have cleared the eligibility test for Lecturers conducted by U.G.C./C.S.I.R. or similar test accredited by the U.G.C. It may be noted that relaxation from requirement (a) i.e., a minimum of 55% marks at Master Degree level is not permissible in any case. However, the candidates belonging to the following categories are exempted from the requirement (b) i.e., clearing the Lectureship Eligibility Test provided they possess a minimum of 55% marks at Master’s Degree Level:

1. Those who have passed the NET Examination conducted jointly by the C.S.I.R. and U.G.C. for Junior Research Fellowship Award;

2. Those who have been awarded M.Phil. Degree upto the 31.3.91; and

3. Those who have already been awarded Ph.D. Degrees or would be awarded the Ph.D. Degree by the 31.12.92.”

3. The petitioner passed M.sc (human genetics) in first class during the years 1987-1990, with 61.46% marks. He also passed M.Phil in Human Genetics in first class with 62.30%. According to the petitioner, he joined the M.Phil course on 15.03.1991, completed his dissertation on 07.04.1992 and seminar on 16.06.1992. The final M.Phil examination was held on 10.07.1992. Petitioner would refer to the certificate issued by the head of the department of Human Genetics, Andhra University, on 17.12.1993 wherein it is stated that, since the no due certificate was submitted by the petitioner on 24.12.1992 and the results were sent to the Registrar’s office on 26.12.1992, it must be held that the petitioner had completed M. Phil course, in all aspects, in the year 1992. Petitioner would submit that the M.Phil results were declared on 20.01.1993 and he was awarded his M.Phil degree on 12.02.1993.

4. According to the petitioner, the 3<sup>rd</sup> respondent obtained his post graduate degree in human genetics in second class, registered himself for Ph.D on 25.03.1991 on the subject of mental retardation and X linked Fragile Sites among Mentally Retarded Patients, a guide was allotted to him on 17.03.1991, and the pre-Ph.D examination was held in April 1992. Petitioner would submit that the 3<sup>rd</sup> respondent had submitted a letter on 08.07.1993 seeking change of topic and had, in fact, chosen a new subject which did not come under human psyto genetics, that on 27.07.1993 his request for change of guide was

accepted and he was allotted research work under the guidance of Dr. Peddaiah with a new topic, that the 3<sup>rd</sup> respondent passed his pre-Ph.D examination on 28.08.1993, five days after interviews were held on 23.08.1993, that the 3<sup>rd</sup> respondent submitted his thesis on 15.12.1993, that on 28.12.1993 the Vice-chancellor accorded permission to the 3<sup>rd</sup> respondent to submit his thesis earlier than the prescribed period and that eventually the 3<sup>rd</sup> respondent was awarded his Ph.D. degree only on 20.07.1995.

5. Petitioner would place reliance on the minutes of the meeting, of the sub-committee of the Board of research studies, held on 29.12.1992, wherein it was resolved that the date of the last written examination or the date of submission of the successfully adjudicated dissertation, whichever is later, shall be considered as the effective date for the candidate being qualified for M.Phil and would submit that since he had given his final M.Phil examination on 10.07.1992 and had submitted his dissertation even prior thereto on 07.04.1992, he must be deemed to have satisfied the requirement of passing his M.Phil course by 31.12.1992. Petitioner would submit that since he was the only available candidate, eligible to be appointed as a lecturer in human genetics, and since the 3<sup>rd</sup> respondent did not possess the requisite qualification as on 31.12.1992, it is he, and not the 3<sup>rd</sup> respondent, who ought to have been appointed as a lecturer.

6. Pursuant to the advertisement issued on 17.10.1992, interviews, which were initially to be held on 10.06.1993, were postponed twice, and were finally held on 23.08.1993. According to the petitioner, on 23.08.1993, the date of interview, he alone was eligible as he was awarded his M.Phil degree on 12.2.1993, and since the 3<sup>rd</sup> respondent had not completed his Ph.D. even on the date of the interview, selection of the 3<sup>rd</sup> respondent was arbitrary and illegal.

7. In the counter-affidavit filed on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> respondents, the petitioner's contention that the 3<sup>rd</sup> respondent was not eligible to apply for the post of lecturer in the department of human genetics is denied. Allegations of favouritism, nepotism, bias and *mala fides* are also denied. It is contended that the selection and appointment of the 3<sup>rd</sup> respondent was valid as he was fully eligible to be considered for appointment to the post of lecturer. It is stated that

the selection committee made an objective evaluation and assessment of all the candidates who had appeared for the interview, had considered their qualifications, research and/or teaching experience and academic achievements, had observed their performance in the interview, awarded marks under various heads to each of the candidates and had selected candidates purely on merit. It is stated that the 3<sup>rd</sup> respondent passed M.Sc in the year 1988 with 57.96% marks, that he was a regular research Scholar in the University, having joined the Ph.D. course on 15.09.1991, that the 3<sup>rd</sup> respondent appeared for pre-Ph.D, (which is equivalent to M.Phil), in the examination conducted in July 1992 and was declared to have passed when the results were announced on 28.08.1993. It is stated that the 3<sup>rd</sup> respondent submitted his Ph.D. thesis on 15.12.1993 and since the U.G.C. circular letter, dated 10.02.1993, exempted candidates who had secured 55% marks at the Master's degree level from appearing in the eligibility test for lecturership provided they submit their Ph.D thesis upto 31<sup>st</sup> December 1993, the 3<sup>rd</sup> respondent, being eligible, was considered for selection and was appointed as a lecturer. It is stated that the Vice-Chancellor, by proceedings dated 28.12.1993, accepted the request of the 3<sup>rd</sup> respondent to permit him to submit his Ph.D. thesis earlier than the prescribed period and that the 3<sup>rd</sup> respondent had, in fact, submitted his thesis on 15.12.1993 itself. Allegations of fraud are denied. It is stated that the petitioner had joined M.Phil course in April, 1991, that he submitted his M.Phil dissertation in November, 1992 and that, by proceedings dated 20.01.1993, he was awarded M.Phil. Respondents would contend that since the petitioner did not pass the NET examination and did not get his M.Phil degree on or before 31.12.1992, as stipulated by the U.G.C., the petitioner did not possess the prescribed qualification and as such was not eligible to be appointed as a lecturer. It is stated that while the selection committee did not include the petitioner in the select panel, the 3<sup>rd</sup> respondent was included in the select panel on the condition that he submitted his thesis before 31.12.1993.

8. The 3<sup>rd</sup> respondent, in his counter-affidavit, would state that the last date for receipt of applications for the post of lecturer in Human Genetics, as per the advertisement dated 17.10.1992, was 17.11.1992 and that the petitioner was not eligible to apply for the post of lecturer at all. It is stated that the petitioner

was one year junior to the 3<sup>rd</sup> respondent and while the 3<sup>rd</sup> respondent passed M.Sc in 1989, the petitioner passed his M.Sc in 1990. The 3<sup>rd</sup> respondent joined the Ph.D. course on 15.03.1991 and the petitioner joined M.Phil course in April 1991. It is stated that pre-Ph.D is equal to M.Phil and some of the question papers are also common, that while the petitioner was awarded his M.Phil degree only 12.02.1993, the 3<sup>rd</sup> respondent submitted his Ph.D. thesis on 15.12.1993 which was accepted in adjudication. Reference is made to the U.G.C. circular dated 10.02.1993 whereunder exemption was granted, from appearing in the eligibility test for lecturership, to those candidates who would submit their Ph.D. thesis upto 31.12.1993. The 3<sup>rd</sup> respondent would contend that as he had submitted his Ph.D. thesis on 15.12.1993, well before the stipulated date ie., 31.12.1993, and his thesis was accepted for adjudication, he was eligible for being selected and appointed to the post of lecturer, whereas the petitioner was not eligible. The 3<sup>rd</sup> respondent also denies the allegations of fraud and favouritism. He would submit that pursuant to the orders of the university dated 15.03.1994, appointing him as a lecturer in human genetics and physical anthropology, he had submitted his joining report and has been working as a lecturer ever since.

9. While Sri P.Srinivasulu, learned counsel for the petitioner, would agree that both the petitioner and the 3<sup>rd</sup> respondent belong to the Scheduled Castes, he would however contend that the entire exercise in postponing interviews from time to time, in permitting the 3<sup>rd</sup> respondent to submit his Ph.D. thesis prior to the prescribed date and the selection process itself were tailored only to suit the 3<sup>rd</sup> respondent and somehow ensure that he was appointed as a lecturer and since the entire exercise of selection was arbitrary and the action of the respondents *mala fide*, selection of the 3<sup>rd</sup> respondent was liable to be set aside. Learned Counsel would submit that the U.G.C. circular dated 10.02.1993 merely provided that those candidates who secured 55% marks at the Masters degree level may be exempted from appearing in the lecturership eligibility test provided that such candidates would submit their Ph.D thesis before 31<sup>st</sup> December 1993, and did not enable the respondent-University to select the 3<sup>rd</sup>

respondent in as much as the clarification of the University Grants Commission does not relate to appointment of lecturers and is, in any event, subsequent to the advertisement notification dated 17.10.1992. Learned Counsel would submit that since the advertisement notification dated 17.10.1992, grants exemption only to those candidates, who had already been awarded Ph.D. degree or those who would be awarded Ph.D. degree by 31.12.1992, from clearing the Lecturership eligibility test, and inasmuch as the 3<sup>rd</sup> respondent had admittedly, not been awarded his Ph.D. degree even by 31.12.1993, he was not eligible to be considered for selection to the post of lecturer in the department of human genetics of the Andhra University. Learned Counsel would submit that the proceedings of the Vice Chancellor dated, 28.12.1993, according permission to the 3<sup>rd</sup> respondent to submit his thesis earlier than the prescribed period, was not for the purpose of appointment as a lecturer and did not empower the selection committee to treat this as an exemption. Learned counsel would submit that since the selection committee had completed the selection process on 23.8.1993, the subsequent event of the petitioner submitting his thesis by 15.12.1993, should not have been taken into consideration by it. Learned Counsel would seek to place reliance on the report of a foreign examiner to show that even as on the 14<sup>th</sup> of June there were several discrepancies in the thesis submitted by the 3<sup>rd</sup> respondent. He would submit that in view of U.G.C circular dated 15.6.1993, the earlier prescription of a candidate being required to pass his M.Phil before 31.3.1991 was no longer valid. Learned counsel would rely on the minutes of the meeting of the Sub-Committee of the Board of Research Studies, held on 29.12.1992, wherein it was resolved that the date of the last written examination or the date of submission of the successfully adjudicated dissertation, whichever is the latest, should be considered as the effective date of the candidate being qualified for M.Phil. Learned counsel would also refer to the certificate, issued by the head of department of Human Genetics on 17.12.1993, to the effect that the petitioner had submitted his M.Phil. dissertation on 7.4.1992, had given his seminars on 15.6.1992 and 16.6.1992, that the last paper of the M.Phil examination was conducted on 10.7.1992, that no dues certificates were submitted by him on 24.12.1992 and the results were sent to the Registrar's office on 26.12.1992 and submit that on a conjoint reading of the minutes of Sub-Committee of the Board of Research

Studies dated 29.12.1992, and the letter of the Head of the Department dated 17.12.1993, since the last M.Phil. examination was held on 10.7.1992 and the dissertation was submitted in June, 1992, either of the dates must be considered as the effective date for a candidate to be qualified for M.Phil and since both these dates were prior to the cut off date of 31.12.1992, the petitioner was fully qualified.

10. Sri P.B. Vijaya Kumar, learned standing counsel for the University, would refer to the counter affidavit of the U.G.C. wherein it is stated that the U.G.C. has not prescribed any minimum or maximum time limit within which a student has to complete his course or to submit his thesis after appearing for the examination, that the U.G.C. has not laid down any guidelines to determine the minimum period required for submission of thesis after research work, that it is for the university concerned to frame their own statutes, rules and regulations in this regard and that it is purely an academic matter which falls under the jurisdiction of the university. Reference is made to the fact that the U.G.C, in exercise of the powers conferred under Section 26(1)(c) of the U.G.C. Act, had framed the University Grants Commission (Qualifications Required of a Person to be Appointed to the Teaching Staff of a University and Institutions Affiliated to it) Regulations, 1991, wherein qualifications were prescribed for appointment to a teaching post in the university or in any of the institutions including constituent or affiliate colleges. These regulations were notified on 19.9.1991 and required, apart from educational qualifications, the candidates to clear the lecturership eligibility test conducted by U.G.C./C.S.I.R. or similar test accredited by the U.G.C. Reference is made to the U.G.C. Circular dated 10.2.1993 whereunder, among others, candidates who would submit their Ph.D. thesis upto 31.12.1993 and those who had already been awarded M.Phil Degree upto 31.3.1991, were exempted by the U.G.C. from appearing in the eligibility test. By circular dated 15.6.1993 exemption in respect of candidates who had been awarded M.Phil degree upto 31.12.1992 was granted by the U.G.C. By Notification dated 21.6.1995, the 1991 Regulations were amended and a proviso was added, below the requirement regarding clearing the eligibility test for appointment to post of lecturer, that candidates who have submitted their thesis or passed the M.Phil examination by 31.12.1993 were exempted from the eligibility test for lecturers conducted by the U.G.C./C.S.I.R. or similar test accredited by the U.G.C. Learned Standing counsel would rely on (1)

**University Grants Commission v. Sadhana Chaudhary; (2) Prof. Yashpal v. State of Chattisgarh; (3) P.V.S.V. Prasada Rao. v. Andhra University; (4) Dalpat Abasaheb Solunke v. Dr. B.S. Mahajan.** He would also submit that the 3<sup>rd</sup> respondent was respondent No.112 in the writ petition heard by the Full Bench in **P.V.S.V. Prasada Rao**<sup>3</sup> and inasmuch as appointment of the 3<sup>rd</sup> respondent was not set aside by the Full Bench, this Court should refrain from doing so in a writ petition filed by a person who himself did not satisfy the eligibility criteria for being appointed to the said post.

11. Smt.K.Sesharajyam, learned counsel for the 3<sup>rd</sup> respondent, would contend that both the petitioner and the 3<sup>rd</sup> respondent had appeared for M.Phil/Pre-Ph.D. examinations in July, 1992 and while the M.Phil results were announced earlier, results of the pre-Ph.D. examination were announced much later. Learned counsel would submit that the 3<sup>rd</sup> respondent should not be penalized for no fault of his as the results of the Pre-Ph.D examination were belatedly announced only on 28.8.1993. She would contend that exemption from passing lecturership eligibility test was permissible only if the candidate had obtained M.Phil degree prior to 31.12.1992 whereas candidates who had submitted their Ph.D thesis prior to 31.12.1993 were also eligible. Learned counsel would submit that since the petitioner was awarded his M.Phil degree only on 12.2.1993, subsequent to the cut off date of 31.12.1992, he was not eligible. Learned counsel would submit that Human Genetics and Physical Anthropology are one and the same department, that the 3<sup>rd</sup> respondent had only changed his guide from Dr. Satyanarayana to Dr. Peddaiah but there was no change of subject and while the 3<sup>rd</sup> respondent had submitted his thesis on 15.12.1993, he was awarded Ph.D. degree on 20.7.1995. Learned counsel would submit that the 3<sup>rd</sup> respondent is eligible, as per the instructions issued by U.G.C, for being appointed as a lecturer, in the respondent University. She would submit that since the selection committee, on a comparative assessment of the merits of the petitioner and the 3<sup>rd</sup> respondent, had found the 3<sup>rd</sup> respondent more meritorious, it is not for this court, at the behest of the petitioner, to sit in appeal over the decision of the Selection Committee in this regard. Learned counsel would refer to Ph.D. regulations to submit that a full time student is required to spend the prescribed period of three years in case of Master's

Degree and two years in the case of M.Phil Degree holders, if a candidate has completed the requirement earlier than the prescribed period, the Vice-Chancellor, on the recommendation of the Principal concerned may permit, (periods up to one year), for early submission of the thesis. Learned counsel would contend that the Vice-Chancellor, in accordance with these regulations, had permitted the 3<sup>rd</sup> respondent to submit his thesis prior to the prescribed three year period. She would also refer to the said regulations, in support of her submission that pre-Ph.D examination is similar to that of M.Phil degree examination.

12. The Advertisement notification dated 17.10.1992, prescribes the last date of receipt of duly filled in applications as 17.11.1992. As is clear therefrom, to be eligible for appointment to the post of Lecturer, the applicant was required to have obtained his Master's Degree in the relevant subject with at least 55% marks. In addition thereto, the candidate was required to clear the lecturership eligibility test conducted by the U.G.C/C.S.I.R or similar test accredited by the U.G.C. The advertisement stipulated that, while relaxation of the minimum stipulated 55% marks at the Masters Degree level was not permissible, relaxation of having cleared the eligibility test for lecturership could be granted, provided the candidate had been awarded M.Phil degree by 31.3.1991 and had either been awarded Ph.D. Degree or would be awarded Ph.D. degree by 31.12.1992. It is only if a candidate had been awarded M.Phil degree prior to 31.3.1991 or would be awarded Ph.D degree by 31.12.1992, was relaxation of the second condition, of clearing the eligibility test for lecturership conducted by the U.G.C/C.S.I.R, permissible. Subsequently the U.G.C, in its circular dated 10.2.1993, granted further relaxation of the requirement of being exempted from passing the eligibility test for lecturership provided that the candidates had submitted their Ph.D. thesis upto 31.12.1993. Thus, while the stipulation in the advertisement dated 17.10.1992, in so far as candidates who had been awarded M.Phil. degree upto 31.12.1991, was retained, relaxation was granted for candidates pursuing Ph.D and while the earlier stipulation was that the candidate should have been awarded Ph.D. degree before 31.12.1992, the relaxation rendered even those who would submit their Ph.D. thesis before 31.12.1993, eligible for exemption. The U.G.C, in its proceeding dated 15.6.1993, informed the Registrars of Universities that the relaxation given

earlier in Circular dated 10.2.1993 was further relaxed and extended to candidates who had been awarded their M.Phil degrees upto 31.12.1992 from appearing in the eligibility test of lecturership.

13. The U.G.C. Circulars dated 10.02.1993 and 15.06.1993 fell for consideration before the Supreme Court. In **Prof. Yashpal<sup>2</sup>**, the Supreme Court held thus:

“.....Entry 66 which deals with coordination and determination of standard in institutions for higher education or research and scientific and technical institutions is in the Union List and Parliament alone has the legislative competence to legislate on the said topic. The University Grants Commission Act has been made with reference to Entry 66 (see *Prem Chand Jain v. R.K. Chhabra* (1984)2 SCC 302 and *Osmania University Teachers' Assn. v. State of A.P.*: (1987(4 SCC 671). The Act has been enacted to ensure that there is coordination and determination of standards in universities, which are institutions of higher learning, by a body created by the Central Government. It is the duty and responsibility of the University Grants Commission, which is established by Section 4 of the UGC Act, to determine and coordinate the standard of teaching curriculum and also level of examination in various universities in the country. In order to achieve the aforesaid objectives, the role of UGC comes at the threshold. The course of study, its nature and volume, has to be ascertained and determined before the commencement of academic session. Proper standard of teaching cannot be achieved unless there are adequate infrastructural facilities in the campus like classrooms, libraries, laboratories, well-equipped teaching staff of requisite calibre and a proper student-teacher ratio. For this purpose, the Central Government has made a number of rules in exercise of powers conferred by Section 25 of the UGC Act and the Commission has also made regulations in exercise of power conferred by Section 26 of the UGC Act and to mention a few, the UGC Inspection of Universities Rules, 1960, the UGC Regulations, 1985 Regarding the Minimum Standards of Instructions for the Grant of the First Degree, UGC Regulations, 1991 Regarding Minimum Qualifications for Appointment of Teachers in Universities and Colleges, etc.....”

14. In **Sadhana Chaudhary<sup>1</sup>**, the Supreme Court held thus:

“.....Prior to the making of the 1991 Regulations there was no statutory requirement regarding clearing the eligibility test for the purpose of appointment to the post of Lecturer. Such a requirement was introduced for the first time by the 1991 Regulations. At the time when the 1991 Regulations were made the provisions contained in the 1982 Regulations had given rise to a legitimate expectation that a person having a Ph.D. or M.Phil. degree and having good academic record as prescribed under the 1982 Regulations would be eligible for appointment on the post of Lecturer without anything more. While the UGC did not intend to deprive the persons who had obtained M.Phil. degree or expectation in the matter of appointment on the post of Lecturer in universities or colleges. It was also felt that the said requirement in the 1991 Regulations should not operate to the prejudice of persons who, having regard to the qualifications prescribed in the 1982 Regulations, had registered for the Ph.D. degree or had joined study for M.Phil. degree course prior to making of the

1991 Regulations and, therefore, provision was made for granting exemption to such candidates with the condition that they should have passed M.Phil. examination or should have submitted Ph.D. thesis by a particular date. Insofar as the date of submission of the Ph.D. thesis is concerned, the said date, i.e., 31.12.1993, has remained unchanged in the Circulars dated 10.2.1993 and 15.6.1993 and the notification dated 21.6.1995. For M.Phil. degree the date was, however, changed from 31.3.1991 to 31.12.1992 by Circular dated 15.6.1993 and from 31.12.1992 to 31.12.1993 by notification dated 21.6.1995. The amendment in the 1991 Regulations that has been made by the notification dated 21.6.1995, in substance, postpones the date of applicability of the requirement regarding clearing the eligibility test in the 1991 Regulations till 31.12.1993 in respect of candidates who had joined the M.Phil. course or registered for Ph.D. degree. Such candidates constitute a distinct class who could be treated separately insofar as the requirement of clearing the eligibility test was concerned. Such a classification of the candidates for the purpose of applicability of the requirement of clearing the eligibility test has a rational basis which has a reasonable nexus with the object sought to be achieved by the 1991 Regulations. We are, therefore, unable to hold that the exemption that has been granted by the amendment introduced in the 1991 Regulations by notification dated 21.6.1995 is violative of the right to equality guaranteed under Article 14 of the Constitution. ....”

15. The relaxation given by the U.G.C, in its circular dated 10.2.1993, did not however result in an amendment being issued to the earlier Advertisement notification dated 17.10.1992 or a fresh notification being issued by the university in this regard. Even after U.G.C. issued its circular dated 15.6.1993, no amendment was issued by the University to the Advertisement dated 17.10.1992 nor was any fresh notification issued by the university carrying out this relaxation.

16. The A.P. Universities Act, 1991 provides that, on and from the date of commencement of the Act, the Andhra University established under the Andhra University Act, 1925 shall be deemed to have been established and incorporated under the A.P. Universities Act. Among the authorities specified in Section 17 is the Board of Management. Section 18 relates to the constitution of a Board of Management and Section 19 prescribes that the Board of Management shall be the executive authority of the University and under Sub-section (5), subject to such Statutes as may be prescribed, the Board of Management has been empowered to appoint teachers of the University above the rank of lecturers, on the recommendations of the Selection Committee constituted for the purpose. Section 43 relates to constitution of Selection Committees and Section 52 relates to the procedure in which statutes are to be made. The resolution, on which reliance is sought to be placed by the petitioner

in support of his contention that he had obtained M.Phil prior to 31.12.1992, is that of the Sub-Committee of the Board of Research Studies and not that of the Board of Management. Any such resolution is, at best, recommendatory and would not amount to a decision of the University. This resolution is therefore of no assistance to the petitioner, nor can it be said that, by submitting his dissertation and giving his last written examination prior to 31.12.1992, the petitioner, in effect, had qualified for M.Phil. The fact remains that he was awarded M.Phil. degree only on 12.2.1993 subsequent to 31.12.1992. It is also relevant to note that the resolution of the Sub-Committee of the Board of Research Studies, on which reliance is placed by the petitioner, is dated 29.12.1992, subsequent to the date of the advertisement issued on 17.10.1992, and even after the last date, for receipt of duly filled in applications i.e., 17.11.1992. The Circulars of U.G.C. dated 10.2.1993 and 15.6.1993 are also subsequent both to advertisement dated 17.10.1992 and the last date for receipt of applications dated 17.11.1992. The U.G.C. circulars do not have retrospective effect and can, at best, be held to apply only from the date on which they were issued and not prior thereto. The subsequent relaxation granted by the U.G.C, for being awarded M.Phil degree upto 31.12.1992, would not therefore enure to the petitioner's benefit, since it is not in dispute that the petitioner had not complied with the prescription in the advertisement dated 17.10.1992 of having been awarded his M.Phil degree prior to 31.3.1991. Thus, on both the dates i.e., on 17.10.1992 when the advertisement was issued and on 17.11.1992 the last date of receipt of applications, the petitioner did not possess the requisite qualifications.

17. Sri P.Srinivasulu, learned counsel for the petitioner, would, however, contend that since interviews were held on 23.8.1993, and as the petitioner was awarded his M.Phil degree on 12.2.1993 prior thereto and since the 3<sup>rd</sup> respondent was not, it is the petitioner alone who should have been considered for appointment to the post of lecturer.

18. In **P.V.S.V. Prasada Rao**<sup>3</sup>, a Full Bench of this Court held thus:

“In **M.A. Murthy Vs. State of Karnataka (2003) 7 SCC 517** and **Shankar K. Mandal Vs. State of Bihar, (2003 9 SCC 519)** the Supreme Court reiterated the earlier law and culled out the principles as under.

(1). The cut-off date by reference to which the eligibility requirement must be satisfied by the

candidates seeking a public employment is the date appointed by the relevant service rules.

(2) If there is no cut-off date appointed by the rules then such date shall be as appointed for the purpose in the advertisement calling for applications.

(3) If there is no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications were to be received by the competent authority.....”

19. The advertisement, in the present case, did not prescribe a cut off date. As such the eligibility criteria is required to be applied with respect to the last date on which applications are to be received by the competent authority and since the cut off date for receipt of applications is 17.11.1992, it is this date which is required to be taken as the cut off date. As the petitioner did not possess the requisite qualifications as on 17.11.1992, it is of no consequence that he possessed the prescribed qualification on the date of the interview held subsequently on 23.8.1993. As already noted above, despite the UGC circulars dated 10.2.1993 and 15.6.1993, no amendment was issued to the said advertisement dated 17.10.1992, whereunder eligibility qualifications were prescribed for being considered for appointment as lecturers. If such an amendment had been issued many more eligible candidates would have applied for selection. In the absence of any amendment being issued thereto, the conditions prescribed in the advertisement dated 17.10.1992 have to be strictly complied with and any clarifications issued subsequent thereto cannot be made applicable retrospectively to selections made pursuant to the said advertisement dated 17.10.1992. In any view of the matter, it is clear that the petitioner has not satisfied the eligibility criteria prescribed in the advertisement notification dated 17.10.1992 and as such was ineligible for being considered for appointment to the post of lecturer.

20. Now the case of the 3<sup>rd</sup> respondent. It is wholly unnecessary for this Court to examine the contentions that the 3<sup>rd</sup> respondent had changed the subject of his thesis, and that he had received critical comments thereupon, since these contentions are wholly extraneous to the writ petition. This Court does not also have the expertise to examine these technical questions. Suffice to note that the 3<sup>rd</sup> respondent was awarded his Ph.D. degree on 20.7.1995.

21. Sri P.Srinivasulu, learned counsel for the petitioner, would submit that the proceedings of the Vice-Chancellor dated 28.12.1993 according permission to 3<sup>rd</sup> respondent to submit his thesis before the three year period was not for the purpose of the appointment since the Selection Committee had already finalized its selection prior thereto on 23.8.1993. While the petitioner makes general allegations of malice, in the absence of any specific reference to the person who had acted malafide or such a person being made *eo nomine* respondent in the writ petition, such general allegations of malice do not call for further examination. (**State of Bihar v. P.P.Sharma**). The fact, however, remains that the 3<sup>rd</sup> respondent had also not fulfilled the qualifications stipulated in the advertisement dated 17.10.1992 of having been awarded his Ph.D by 31.12.1992. The 3<sup>rd</sup> respondent would seek to place reliance on the U.G.C. Circular dated 10.2.1993 wherein this condition of being awarded Ph.D degree by 31.12.1992 was relaxed to include candidates who submit their Ph.D. thesis by 31.12.1993. The 3<sup>rd</sup> respondent would contend that he had submitted his Ph.D. thesis by 15.12.1993, prior to the last date prescribed in the U.G.C. circular dated 10.2.1993 i.e. 31.12.1993. As already noted, no amendment was issued to the advertisement notification dated 17.10.1992 and as such selections were required to be made strictly in accordance with the conditions stipulated in the said notification dated 17.10.1992. The subsequent circular of the UGC dated 10.2.1993 would not enure to the benefit of the 3<sup>rd</sup> respondent since he was not, as required under the Advertisement dated 17.10.1992, awarded his Ph.D. before 31.12.1992. Since the 3<sup>rd</sup> respondent had not passed the lecturership eligibility test, he also did not satisfy the eligibility criteria prescribed in the advertisement dated 17.10.1992 for being appointed as a lecturer.

22. The Selection Committee, in its meeting held on 23.9.1993, did not award any marks either to the petitioner or to the 3<sup>rd</sup> respondent for qualification in as much as neither of them had been awarded the M.Phil or Ph.D degree prior to the cut off date of 31.3.1991 and 31.12.1992 respectively. While the total marks awarded to the petitioner was 28, the total marks awarded to the 3<sup>rd</sup> respondent were 32.

23. In **Dalpat Abasaheb Solunke<sup>4</sup>**, the Supreme Court held thus:

“.....It will thus appear that apart from the fact that the High Court has rolled the cases of the two appointees in one, though their appointments are not assailable on the same grounds, the court has also found it necessary to sit in appeal over the decision of the Selection Committee and to embark upon deciding the relative merits of the candidates. It is needless to emphasise that it is not the function of the court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by the court, the High Court went wrong and exceeded its jurisdiction.....”

24. The Selection Committee recorded that it had considered the academic and research qualifications of the candidates, they had interviewed the candidates who had appeared for the interview. Considering their academic and research record and their performance in the interview, the selection committee had recommended certain candidates as suitable for appointment as lecturers. The 3<sup>rd</sup> respondent was selected, under the S.C. category, subject to the condition that he submitted his Ph.D. thesis before 31.12.1993. This relaxation, as noted above, is at variance with the prescription in the advertisement dated 17.10.1992, and in the absence of any amendment, to the conditions stipulated in the said advertisement, being issued and fresh applications invited, no such relaxation could have been granted to any of the existing applicants including the 3<sup>rd</sup> respondent.

25. Since both the petitioner and the 3<sup>rd</sup> respondent were ineligible, on the relevant date i.e., the last date of receipt of applications on 17.11.1992, for being considered for appointment as lecturer, the question which arises for consideration is as to whether appointment of the 3<sup>rd</sup> respondent as a lecturer in 1994 should now be set aside after 11 years, more so, as the Selection Committee, on a comparative evaluation of the merits of the petitioner and the

3<sup>rd</sup> respondent, had found the 3<sup>rd</sup> respondent more meritorious. Should this Court exercise its discretion and set aside the appointment of the 3<sup>rd</sup> respondent at the behest of the petitioner, who himself was not eligible to be appointed as a lecturer? The answer has necessarily to be in the negative.

26. The validity of the very same selection process, pursuant to the very same notification, came up for consideration before a Full bench of this Court in **P.V.S.V. Prasada Rao**<sup>3</sup>. The Full Bench recorded its findings against the University but, while considering the relief, was not inclined to exercise its discretion in favour of the petitioner and refused to set aside appointments made to various posts . The Full Bench held thus:

“.....Thus, from the date of issue of impugned notification, by now almost for over a decade, Respondents 5 to 208 have been continuing in the posts of Lecturers/Readers. It is also brought to our notice that these respondents who were bachelors/spinsters at the time of appointment, later got married, established families and settled in life. In all probability, all of them have crossed forty years. If at this stage of their appointments are set aside, the effect on their life and the effect on their life and the effect on the University administration would not be short of catastrophe. As noticed by the Supreme Court in **H.C. Puttaswamy Vs. Chief Justice of Karnataka High Court : AIR 1991 SC 295** even if the respondents 5 to 208 are again given an opportunity to compete with the freshers, they would not stand chance of competing with them.

“..... While considering the question of delay and laches, it is also necessary to notice that out of 208 appointments made (these figures re not denied by the petitioners), 26 lecturers joined the University service after resigning from the job they were doing. While the matters are pending before this Court, 16 lecturers left the University job and three retired. What is more? Three lecturers who joined pursuant to impugned selections already died and their dependents are being given pension. If at this stage, these appointments are interfered the human misery to which the respondents 5 to 208 would be subjected to, can well be imagined. Therefore, this is not a case where this Court should exercise discretion in favour of the petitioners.....”

“..... As noticed above some of the petitioners applied for the posts for which they are qualified. They appeared before the selection committee for the interview. They waited till Board of Management accepted the recommendation of the selection committees. They did not even approach this Court at that stage. They filed the writ petition after the University made appointments pursuant to resolution of the Board of Management questioning the very employment notification itself. Whether principles of estoppel and waiver operate against them? The answer must be in the affirmative.....”

27. Since the very same selection process was the subject matter of

examination by a Full Bench of this Court, albeit on the ground of failure to provide proper reservation, and since the Full Bench had chosen not to exercise its discretion in favour of the petitioner, I am of the view that in the present case also, this Court should do likewise.

28. In addition to the fact that the Full Bench, in **P.V.S.V. Prasada Rao**<sup>3</sup>, had so held, it must also be noted that subsequently the 3<sup>rd</sup> respondent was awarded his Ph.D. on 20.7.1995 a higher qualification than M.Phil. which the petitioner possessed. It is also brought to the notice of this Court that the petitioner was working in an Insurance Company and earlier W.P.No.24018 of 2004 was filed against him. One Dr. D.S.R.S. Prakash, filed W.P.No. 24018 of 2004 to declare the action of the Andhra University in appointing Sri T. Mahankali (the petitioner herein) as a Teaching Assistant in the Department of Human Genetics, vide proceedings dated 17.07.2004, as arbitrary and illegal. The petitioner therein Dr. D.S.R.S. Prakash contended that though he was an unemployed Ph.D holder, the 1<sup>st</sup> respondent had appointed Sri T. Mahankali (the petitioner herein) as a Teaching Assistant, though Sri T. Mahankali was working as a Junior Accountant with the Director of Insurance (GLIC), Tilak Road, Boggulakunta, Hyderabad and was granted extraordinary leave on private affairs for a period of two years in view of further studies. Reference was made to the leave sanction order to show that Sri T. Mahankali was directed not to undertake any form of employment during the course of leave sanctioned and that no extension of leave would be considered. Dr. D.S.R.S. Prakash contended that, contrary to the sanction order of the Director of Insurance (GLIC), Sri T. Mahankali, though not qualified to serve as a teaching member of the staff had been engaged as a Teaching Assistant, despite the fact that he did not possess Ph.D degree. Learned Counsel, appearing for Sri T. Mahankali, contended that he was only provided temporary teaching assignment which could not be considered as employment. This Court disposed of W.P.No. 24018 of 2004, by order dated 09.06.2005, directing the Registrar, Andhra University not to engage the services of Sri T. Mahankali especially in view of the restriction imposed by the Director of Insurance (GLIC) and that Sri T. Mahankali was not entitled to undertake any employment.

29. Sri P. Srinivasulu, learned counsel for the petitioner, on instructions, would submit that the petitioner Sri T. Mahankali resigned from the services of the Insurance Company on 21.7.2005 and that he is now working part time in the very same department of the University. The fact, however, remains that while the 3<sup>rd</sup> respondent, after joining as lecturer in the respondent University in 1994, has remained in the service of the University for more than 11 years, the petitioner continued to work in the Insurance company till he resigned, less than a year ago on 21.7.2005. I see no reason, therefore, to set aside the appointment of the third respondent, at the behest of the petitioner herein, who himself was ineligible to be considered for appointment to the post of lecturer.

30. The writ petition fails and is accordingly dismissed. However, in the circumstances without costs.

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Date: .03.2006. RAMESH RANGANATHAN, J

MRKR/ASP



